

C1

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street, N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: WAC 01 217 55877 Office: California Service Center Date: **AUG 19 2003**

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

PUBLIC COPY

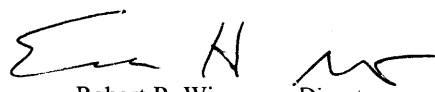
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), in order to employ him as a choir director/accompanist at a monthly salary of \$1,000.¹

The acting director denied the petition, finding that the petitioner had failed to establish that the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

On appeal, counsel for the petitioner argues that the beneficiary's duties will be those of a liturgical worker, and that the petitioner entitled the position as that of choir director for lack of a better term.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of

¹ The petitioner has variously entitled the position offered to the beneficiary as "minister of liturgy," "liturgical worker," "choir director/accompanist," and "choir and music director."

1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is described as a Protestant Christian church of the Assemblies of God denomination. The petitioner failed to state the size of its congregation.

The beneficiary is a native and citizen of South Korea who last entered the United States as a nonimmigrant visitor for pleasure (B-2) on February 28, 1998, with permission to remain until February 26, 1999. The beneficiary has remained in the United States in unlawful status since the expiration of his authorized period of admission. In addition, the Form I-360 indicates that the beneficiary has been employed in the United States without Bureau permission.

To establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

The primary issue to be addressed in this proceeding is whether the proposed position constitutes a qualifying religious occupation for the purpose of special immigrant classification.

The regulation at 8 C.F.R. § 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an "activity which relates to a traditional religious function."

The Bureau interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed or beliefs of the

denomination, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In response to the acting director's request for additional information, the petitioner submitted the following statement concerning the duties of the position:

The technical title of the beneficiary's position is Minister of Liturgy. For simplicity, we also call the position Choir Conductor. The main duty of this individual is to lead our religious organization in liturgical functions performed during our rituals. These liturgical functions include chanting, hymns, singing, and other musical rituals. These functions are an integral part of our religious worship. These liturgical functions set the mood up for the members to listen to the Pastor's sermons and invites [sic] the Holy Spirit to be among us as we worship.

Some of the duties of this position will include leading and conducting the choir in preparation of receiving the message. The Minister of Liturgy will also select the hymns to conducted [sic] during our religious worship. The individual will determined the order of the hymns, the method that they are created, the instruments to be used, and the tome and tempo of the hymn. The Minister of Liturgy will invite the Holy Spirit prior to the deliverance of our sermon and will create an environment that is consistent with such and conductive to the deliverance of the Pastor's sermon. Moreover, he will display public affection for our Lord according to our religious believes [sic] and lead other members in these religious rituals. The main objective of the Minister of Liturgy will be in creating the religious ambiance for effective deliverance and effective reception of the Pastor's message. These rituals along with other liturgical functions will be performed by the candidate.

On appeal, counsel for the petitioner reiterates the above-cited statement. No new information or evidence has been submitted on appeal.

The Bureau must consider each petition on its individual merits. After a review of the record, it is concluded that the petitioner has failed to submit sufficient documentary evidence to establish that the proffered position of choir director/accompanist is a qualifying religious occupation. There is no evidence contained in the record that the position is defined and recognized by the governing body of the denomination, and that it is traditionally a permanent, full-time, salaried occupation within the denomination. Simply going on record without supporting

documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Beyond the decision of the acting director, the petitioner has failed to submit sufficient evidence to establish that it has the ability to pay the beneficiary the proffered wage. The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. The petitioner has also failed to submit sufficient evidence to establish that the beneficiary had been carrying on a religious occupation for the two years preceding the filing of the petition. The petitioner has not submitted independent, verifiable documentation such as W-2 Forms showing payments to the beneficiary, the beneficiary's income tax records, or other corroborative evidence to establish the beneficiary's employment. Since the appeal will be dismissed for the reason stated above, these issues need not be examined further.

While the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.